

FILED
U.S. DISTRICT COURT
WESTERN DIVISION
MASSACHUSETTS
AUG 19 2004

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
WESTERN DIVISION**

**CITIZENS AWARENESS
NETWORK, INC.,**

Plaintiff

Civil Action No. 04cv30114-MAP

v.

**UNITED STATES OF AMERICA
AND**

**UNITED STATES NUCLEAR
REGULATORY COMMISSION,**

Defendants

Judge Michael A. Ponser

**CITIZENS AWARENESS NETWORK'S
OPPOSITION TO DEFENDANTS' MOTION TO DISMISS AND
RENEWED REQUEST FOR DECLARATORY AND OTHER
RELIEF INCLUDING COURT FEES AND COSTS AND
ATTORNEYS' FEES UNDER 5 U.S.C. 552 (FOIA)**

Plaintiff, Citizens Awareness Network, Inc. [CAN], by its attorney Jonathan M. Block, moves in opposition to the defendants' Motion to Dismiss (August 9, 2004) on the basis of the fact that CAN requested declaratory, injunctive, and other relief within both this court's equitable authority and the authority provided under the Freedom of Information Act [the FOIA], 5 U.S.C. §552 *et seq.*, and that, therefore, the case is not moot. CAN contends that the

issue raised by the United States Nuclear Regulatory Commission's [NRC's] policies interpreting Exemption 5 under the FOIA as permitting it to withhold, on the basis of alleged attorney-client privilege, documents it failed to protect is inconsistent with prevailing legal standards for exercising Exemption 5 and, therefore, violates the disclosure requirements of the FOIA.

Moreover, as the defendant NRC also grossly misrepresented the contents of the portion of the withheld portion of the document at issue in order to justify doing so, it is important that this court review the agency's determination for withholding the document at issue and declare the state of the law concerning the NRC's actions to prevent the wrong that occurred in this case from recurring and to prevent a dismissal of this matter from being used as precedent for continuing violations of the FOIA. A supporting memorandum of facts and law is attached hereto.

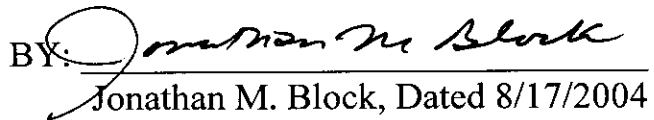
In accordance with Local Rule 7.1, the undersigned counsel for CAN certifies that he conferred with the defendants' counsel, Karen L. Goodwin, but could not resolve the issues she raised in her motion to dismiss.

WHEREFORE, the plaintiff requests that the court deny the motion to dismiss the complaint, make findings on the merits of the NRC's policies for

invoking Exemption 5 of the FOIA to bar access to otherwise unprivileged documents, and grant plaintiff its fees, costs, and attorney's fees for a litigation that, but for the NRC's wrongful conduct, would have been unnecessary.

Respectfully submitted:

CITIZENS AWARENESS NETWORK, INC.

BY: 
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Of counsel:

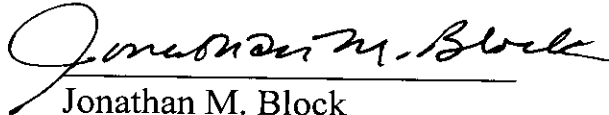
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CERTIFICATE OF SERVICE

This is to certify that I have this day served upon the person listed below, attorney for the defendants in this case, a copy of the foregoing document by mailing it to her United States Postal Service pre-paid first-class mail:

Karen L. Goodwin
Assistant U.S. Attorney
1550 Main Street, Room 310
Springfield, MA 01103-1422
(413) 785-0269

At Putney, Vermont, August 17, 2004.

A handwritten signature in cursive script, reading "Jonathan M. Block", written over a horizontal line.

Jonathan M. Block
First Circuit Bar No. 30343
Attorney for Plaintiff